

## **Item SPR05-37 Response Form**

**Title:** Disciplinary Action: Complaints About Subordinate Judicial Officers (amend Cal. Rules of Court, rules 6.655(i) and 6.603(c)(4)(C); repeal section 16, Standards of Judicial Administration)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-37)

Title	Disciplinary Action: Complaints About Subordinate Judicial Officers (amend Cal. Rules of Court, rules 6.655(i) and 6.603(c)(4)(C); repeal section 16, Standards of Judicial Administration)
Summary	The proposed amendment to rule 6.655(i) would preclude a presiding judge from taking any disciplinary action against a subordinate judicial officer (SJO) without first giving the SJO a copy of the complaint or a summary of the allegations and an opportunity to respond. The proposal would also repeal section 16 of the Standards of Judicial Administration as superfluous and delete the reference to section 16 in rule 6.603(c)(4)(C).
Source	Trial Court Presiding Judges Advisory Committee
Staff	Mark Jacobson, Attorney, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>Rule 6.655 sets forth the procedure for the handling of complaints about SJOs by presiding judges. After initial review of a complaint, the presiding judge may close the matter, conduct a preliminary investigation, or conduct a formal investigation. (Rule 6.655(g).) One difference between a preliminary investigation and a formal investigation is the type of discipline that can be imposed afterward. Following a preliminary investigation, a presiding judge may take “appropriate informal action, which may include a reprimand or warning . . . .” (Rule 6.655(i)(4)(B).) If the presiding judge finds a basis for proceeding further, he or she may conduct a formal investigation, which can result in an oral or written warning, a private or public reprimand, suspension, or termination. (Rule 6.655(j)(3).)</p> <p>If the matter proceeds to a formal investigation, rule 6.655(j)(1)(B) provides that as soon as practicable, the presiding judge “shall give the subordinate judicial officer a copy of the complaint or a summary of its allegations and allow the subordinate judicial officer an opportunity to respond.” There is no such requirement at the preliminary investigation stage even though an SJO is subject to discipline in the form of an informal reprimand or warning. Rather, rule 655(i)(3) states that a presiding judge “<i>may</i> give the subordinate judicial officer a copy of the complaint or a summary of its allegations and allow him or her an opportunity to respond.” (Emphasis added.)</p> <p>Because rule 6.655’s notice provisions relating to preliminary investigations are discretionary, it is possible that a presiding judge could discipline an SJO without providing notice and an opportunity to respond to the allegations. There is concern that this procedure may not offer sufficient protections for SJOs. In addition, affording the SJO notice and an opportunity to respond would allow the SJO to provide important information to the presiding judge to help focus the inquiry and perhaps to help structure the response ultimately sent to the complainant.</p>

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This proposed amendment to rule 6.655(i) would require a presiding judge to give the SJO both notice and an opportunity to respond when the presiding judge intends to issue an informal reprimand or warning following a preliminary investigation. It would not require notice and an opportunity to respond if the presiding judge intends to take other informal action.

Notice and an opportunity to respond would not have to be provided in every preliminary investigation because the investigation could be limited to reviewing the case file or a transcript and determining that there is no merit to the complaint. In such cases, no purpose would be served by providing notice and an opportunity to be heard, and the amended rule would not require it.

Thus, the rule would be amended so that a presiding judge cannot issue a reprimand or a warning to an SJO without giving the SJO a copy of the complaint or a summary of its allegations and an opportunity to respond. If the presiding judge does not intend to take any disciplinary action, providing notice and an opportunity to respond would remain discretionary.

This proposal would also repeal section 16 of the Standards of Judicial Administration. Section 16, adopted effective July 1, 1978, sets forth guidelines for processing complaints against court commissioners and referees. Rule 6.655, which also contains procedures for handling complaints about SJOs, was adopted effective November 20, 1998. The rule incorporates all the provisions of section 16 except the one stating that “a copy of the complaint should be supplied to the commissioner or referee, who should be allowed an opportunity to respond.” This provision would be superseded by the proposed amendment to rule 6.655. Section 16 was retained when rule 6.655 originally was adopted to provide guidance in the discipline of SJOs in matters not within the jurisdiction of the Commission on Judicial Performance.

Section 16 would be repealed because it is superfluous and creates ambiguity. First, virtually all of section 16’s provisions were incorporated into rule 6.655. Second, courts have discretion to apply the procedure in the rule to complaints about conduct that would not be within the jurisdiction of the Commission on Judicial Performance. However, the repeal of section 16 would not mean that presiding judges are required to employ the rule 6.655 procedure when they handle such complaints. Under rule 6.655(h)(1)(B), the presiding judge can close the matter. If the complaint raises concerns about job performance short of misconduct, the presiding judge can address the issue as he or she deems appropriate. Finally, section 16 does not provide any guidance on how a presiding judge should handle such complaints.

If section 16 is repealed, the reference to it in rule 6.603 should be removed. Rule 6.603(c)(4)(C) directs presiding judges to “[p]repare and submit to the

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judges for consideration and adoption procedures for receiving, inquiring into, and resolving complaints lodged against court commissioners and referees, consistent with rule 6.655, giving due consideration to section 16 of the Standards of Judicial Administration.”

The text of the amended rules is attached at pages 4–7.

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Attachment

## Invitation to Comment (SPR05-37)

Rule 6.655 of the California Rules of Court would be amended effective January 1, 2006, to read:

1   **Rule 6.655. Complaints against subordinate judicial officers**

2  
3   **(a)–(h)** \* \* \*

4  
5   **(i)**   (1)–(2) \* \* \*

6  
7       (3)   The presiding judge may give the subordinate judicial officer a copy of the complaint  
8           or a summary of its allegations and allow him or her an opportunity to respond. The  
9           presiding judge must give the subordinate judicial officer a copy of the complaint or a  
10          summary of its allegations and allow the subordinate judicial officer an opportunity to  
11          respond before the presiding judge takes appropriate informal action in the form of a  
12          reprimand or warning as described in subdivision (i)(4)(B).

13  
14       (4)–(5) \* \* \*

15  
16  
17   **(j)–(l)** \* \* \*

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Rule 6.603 of the California Rules of Court would be amended effective January 1, 2006, to read:

1 **Rule 6.603. Authority and duties of presiding judge**

2  
3 **(a)–(b)** \* \* \*

4  
5 **(c) [Duties]** \* \* \*

6  
7 (4) (Oversight of Judicial officers) The presiding judge shall:

8  
9 (A)–(B) \* \* \*

10  
11 (C) **[Commissioners]** Prepare and submit to the judges for consideration and  
12 adoption procedures for receiving, inquiring into, and resolving complaints  
13 lodged against court commissioners and referees, consistent with rule  
14 6.655, ~~giving due consideration to section 16 of the Standards of Judicial~~  
15 ~~Administration;~~

16  
17 (D)–(E) \* \* \*

18  
19 (5)–(11) \* \* \*

20  
21 **(d)** \* \* \*

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Section 16 of the Standards of Judicial Administration would be repealed effective January 1, 2006:

**~~Sec. 16. Procedures for handling complaints against court commissioners and referees~~**

~~In establishing procedures for receiving and resolving complaints against court commissioners and referees a court should consider the following suggested guidelines:~~

- ~~(1) A complaint received on the conduct of a subordinate judicial officer should be directed to the presiding judge. When the complaint is not in writing, a memorandum that includes the pertinent information should be made.~~
- ~~(2) A file should be maintained showing each complaint and its disposition.~~
- ~~(3) The presiding judge or a judge or judges designated by the presiding judge should review each complaint promptly. A complaint that is frivolous or unfounded on its face may be disposed of without further action, but the complainant should be informed of the disposition and a memorandum should be placed in the file.~~
- ~~(4) A preliminary inquiry should be made on any complaint that has possible validity. A copy of the complaint should be supplied to the commissioner or referee, who should be allowed an opportunity to respond. The preliminary inquiry may be terminated if the complaint is found to be lacking in merit or an acceptable explanation is offered.~~
- ~~(5) When the preliminary inquiry indicates that a complaint not minor in nature appears to have validity or there is other good cause including other complaints, the presiding judge should appoint a committee of judges to conduct further investigation. The commissioner or referee should be presented a written statement of the allegations and provided an opportunity to respond either orally or in writing.~~
- ~~(6) At the conclusion of the investigation the committee should make a written report and recommendation for action to be taken by the court. The committee may recommend that no further action be taken on the complaint, that a reprimand be given the commissioner or referee, or that further proceedings be conducted to consider suspension or termination of employment. The court in determining the disposition of the complaint should given due consideration to the committee's recommendation.~~
- ~~(7) Each complainant should be notified promptly in writing of the receipt and of the disposition of the complaint.~~

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- 1           (8) ~~The complaint at all stages should be handled as promptly as due~~
- 2           ~~process allows.~~
- 3
- 4           (9) ~~Except as provided in paragraphs (3) and (7), all papers filed and~~
- 5           ~~proceedings conducted on a complaint against a commissioner or referee~~
- 6           ~~should be confidential until disciplinary action is ordered by the court.~~
- 7